

## SECOND DIVISION

[ GR. No. 199081, January 24, 2018 ]

**ASIGA MINING CORPORATION, PETITIONER, VS. MANILA  
MINING CORPORATION AND BASIANA MINING EXPLORATION  
CORPORATION, RESPONDENTS.**

### D E C I S I O N

**REYES, JR., J:**

*Under the Mineral Resources Decree of 1974, as amended, and as properly interpreted by established jurisprudence, abandonment by non-performance of the annual work obligation could be declared only after the observance of due process.*

#### **The Case**

Challenged before the Court *via* this Petition for Review on *Certiorari* under Rule 45 of the Rules of Court is the Decision<sup>[1]</sup> of the Court of Appeals (CA) in CA-G.R. SP No. 100335, promulgated on May 12, 2011, which affirmed *in toto* the Decision<sup>[2]</sup> dated July 31, 2007 of the Mines Adjudication Board (MAB) of the Department of Environment and Natural Resources (DENR). Likewise challenged is the subsequent Resolution<sup>[3]</sup> promulgated on October 24, 2011 which upheld the earlier decision.

#### **The Antecedent Facts**

Petitioner Asiga Mining Corporation (Asiga) was the holder of mining claims over hectares of land located in Santiago, Agusan del Norte. These claims, known as MIRADOR and CICAPE, were granted unto Asiga by virtue of the Mining Act of 1936.<sup>[4]</sup> Subsequently, when the law was amended by the Mineral Resources Decree of 1974,<sup>[5]</sup> the petitioner had to follow registration procedures so that its earlier mining claims, MIRADOR and CICAPE, could be recognized under the new law. Following their successful application, their mining claims over the subject area were upheld. Two decades later, the Mineral Resources Decree of 1974 was amended and superseded by the Mining Act of 1995.<sup>[6]</sup> Like before, Asiga was again required by the supervening law to undergo registration procedures so that its mining claims could be recognized anew.

Hence, on March 31, 1997, Asiga applied with the Mines and Geosciences Bureau (MGB) to convert its mining claims into a Mineral Production Sharing Agreement (MPSA) as required by the Mining Act of 1995 and its implementing rules and regulations.

As fate would have it, it was during this application process when Asiga discovered

that its mining claims overlapped with that of respondent Manila Mining Corporation (respondent MMC), by about 1,661 hectares, and of respondent Basiana Mining Exploration Corporation (respondent BMEC) by 214 hectares.<sup>[7]</sup>

As it happened, each of the respondents had pending applications for MPSA over the overlapping subject areas which were filed way earlier than the petitioner's application. Respondent MMC applied for MPSA over Cabadbaran and Santiago, Agusan del Norte as early as November 26, 1992. Respondent BMEC, on the other hand, made a similar application as early as October 3, 1995. After satisfying the initial mandatory requirements, respondents MMC and BMEC published and posted their respective Notices of Application for MPSA in a newspaper of general circulation for two (2) consecutive weeks, and posted the same in the bulletin boards of concerned government agencies.<sup>[8]</sup>

Upon knowledge of the foregoing, and to protect its interest over the subject area, Asiga filed before the MGB-CARAGA Regional Office an *Adverse Claim with Petition for Preliminary Injunction* against the respondents MMC and BMEC, and prayed for the exclusion of the area applied for by the respondents from the bounds of its mining claims. It asserted that: (1) it has vested right to the approved and existing mining claims that were awarded to it since 1975; (2) it has preferential right to enter into any mode of mineral agreement with the government for the period up to 14 September 1997; and (3) the respondents' MPSA applications are null and void because the areas applied for encroached on Asiga's mining claims and thus, were closed to application.

The respondents MMC and BMEC, on the other hand, separately filed a Motion to Dismiss on grounds of prescription and abandonment of mining claims. Collectively, they averred that: (1) Asiga's adverse claim is rendered void by prescription as it was only filed more than thirty (30) days from the date of the first publication of respondents' Notice of Application for MPSA; (2) Asiga did not substantiate the alleged encroachment since it failed to submit documents that would prove such claim; (3) Asiga already abandoned its mining claims because it failed to file an Affidavit of Annual Work Obligation (AAWO) showing its work performance over the subject mining areas for more than two (2) consecutive years.

On December 24, 1998, the Panel of Arbitrators organized by the MGB-CARAGA Regional Office rendered a Decision in favor of Asiga, the dispositive portion of which states:

WHEREFORE, finding petitioner's adverse claim unnecessary, the same is hereby dismissed. Respondents Manila Mining Corporation and Basiana Mining Corporation's Mineral Production Sharing Agreement Applications whose areas overlapped Asiga's existing and valid mining claims, "MIRADOR" and "CICAFE" as shown herein and in the records of the Mines and Geosciences Bureau, Region XIII, Surigao City should be amended accordingly and excluded therefrom Petitioner's said valid and existing mining claims. But respondent's Mineral Production Sharing Agreement applications whose areas fell in areas open for mining locations and those which fell within petitioner's abandoned claims should remain as they are.<sup>[9]</sup>

The respondents appealed to the Mines Adjudication Board (MAB) reiterating their arguments of prescription and abandonment, to which the MAB agreed. In the dispositive portion of its Decision dated July 31, 2007, the MAB said:

WHEREFORE, PREMISES CONSIDERED, the Decision of the Panel of Arbitrators dated December 24, 1998 in POA CASE NO. XIII-09-97 is hereby REVERSED AND SET ASIDE. The Regional Director of the Mines and Geosciences Regional Office No. XIII, Surigao City is hereby ordered to give due course to the valid Application for Mineral Production Sharing Agreement No. APSA-0007-X of Manila Mining Corporation and APSA No. 00047-X Basiana Mining Exploration Corp., subject to compliance with the existing mining law and its implementing rules and regulations.<sup>[10]</sup>

Aggrieved, Asiga filed a Petition for Review under Rule 43 of the Rules of Court before the CA. It assailed the MAB decision arguing that: (1) holders of valid and existing mining claims cannot be divested of their rights by mere failure to file adverse claim within the prescribed 30-day period from publication of new mining applications; and (2) the decision ignored the new grace period of September 15, 1997 provided under DAO 97-07 (Series of 1997) within which to file an MPSA application and pay the required fees.

On May 12, 2011, the CA promulgated the assailed decision. It ruled that Asiga cannot be considered a holder of valid and existing mining claims. The Court of Appeals said that:

Clearly, ASIGA was duty bound to conduct actual work on its mining claims and to file an AWWO showing proof of its compliance before Mines Regional Officer concerned within sixty (60) days from the end of the year in which such work obligation was required. Significantly, it is provided that failure to comply with the said obligations for two (2) consecutive years shall result to an automatic abandonment of ASIGA's mining claims.

It is an established fact—as found by both POA and MAB—that ASIGA had, indeed, failed to file an AAWO nor to conduct actual work on its mining claims ever since it was granted a leasehold right over the same. Consequently, pursuant to Section 27 aforequoted, ASIGA's mining claims were deemed abandoned by operation of law. x x x.<sup>[11]</sup>

Thus, the dispositive portion of the decision of the CA reads:

WHEREFORE, premises considered, the instant petition is DISMISSED. The Decision dated 31 July 2007 of the Mines Adjudication Board is AFFIRMED *in toto*.<sup>[12]</sup>

After the dismissal of Asiga 's motion for reconsideration, Asiga filed this petition for review on *certiorari*.

### **The Issues**

The petitioner raised the following arguments:

A — The [CA] committed grave error in law in instantly divesting petitioner of its existing rights over its mining claims for alleged failure to submit its Annual Work Obligations report, the decision being inconsistent with existing doctrines requiring field investigation on the actual work done and summary hearing to determine propriety of cancellation for abandonment of claims.

B — The [CA] committed grave error in law in holding that petitioner's failure to pay occupation fees within thirty (30) days from the filing of Mineral Production Sharing Agreement (MPSA) conversion amounts to abandonment, the finding being completely incompatible with DAO Memorandum Order No. 97-07 which allows payment of fees within 30 days from final termination or resolution of pending cases or dispute of claims.

C — The [CA] committed grave error in law in sustaining the cancellation of petitioner's mining claim in favor of respondents Manila Mining Corporation (MMC) and Basiana Mining Exploration Corporation (BMEC).<sup>[13]</sup>

In sum, petitioner Asiga comes before this Court to ask for the resolution of only one issue: whether or not Asiga could be considered to have abandoned its mining claim over the hectares of land located in Santiago, Agusan del Norte on the basis of (a) non-submission of the affidavit of annual work obligations, and (b) non-payment of fees. An answer to this query will serve as the fulcrum around which the rights of the petitioner and the respondents could be ascertained.

### **This Court's Ruling**

The petition is impressed with merit.

Based on the facts as borne by the records of this case, the Court is of the considered opinion that Asiga did not abandon its mining claims over the subject area. To rule that it did on the basis merely of the non-submission of the affidavit and the non-payment of fees, without considering the relevant implementing rules and regulations of the law as well as settled jurisprudence on the matter, would cause undue injury to a right granted—and thus protected by law—unto the petitioner.

The notion of "automatic abandonment" being invoked by the respondents is provided for in Section 27 of the Mineral Resources Development Decree of 1974. And as early as 1990, the Court has already ruled on the proper interpretation of this provision in the case of *Santiago v. Deputy Executive Secretary*.<sup>[14]</sup> In no

uncertain terms, the Court has already established that there is no rule of automatic abandonment with respect to mining claims for failure to file the affidavit of annual work obligations.<sup>[15]</sup>

As originally worded, Section 27 of the Mineral Resources Development Decree of 1974 provided that the failure of a claim owner to submit a sworn statement of its compliance with its annual work obligations for two (2) consecutive years shall "cause the forfeiture of all rights to his claim." Particularly, it states that:

SECTION 27. Proof of Annual Work Obligations. — The claim owner shall submit proof of compliance with the annual work obligations by filing a sworn statement with the Director within sixty (60) days from the end of the year in which the work obligation is required, in a form to be prescribed by regulation. Failure of the claim owner to file such proof of compliance for two (2) consecutive years shall cause the forfeiture of all rights to his claim.

In 1978, Section 15 of Presidential Decree (P.D.) No. 1385 amended this specific provision. Instead of merely causing the forfeiture of the mining rights upon failure to comply with the required submissions, the section then provided for an "automatic abandonment" of the mining claims, viz:

SECTION 15. Section 27 of the same Decree is hereby amended to read as follows:

SECTION 27. Proof of Annual Work Obligations. — The claim owner/lessee shall submit proof of compliance with the annual work obligations by filing an affidavit therefor and the statement of expenditures and technical report in the prescribe[d] form in support thereof with the Mines Regional Officer within sixty (60) days from the end of the year in which the work obligation is required: Provided, **That failure of the claimowner to comply therewith for two (2) consecutive years shall constitute automatic abandonment of the mining claims:** Provided, Further, That, if it is found upon field verification that no such work was actually done on the mining claims, the claimowner/lessee shall likewise lose all his rights thereto notwithstanding submission of the aforesaid documents.<sup>[16]</sup> (Emphasis supplied)

In 1980, this provision was once again amended. Section 5 of P.D. No. 1677 retained the "automatic abandonment" provision and further included that, should a verification be conducted and it was discovered that no work was actually accomplished despite the submission of an affidavit to that effect, the owner/lessee shall likewise automatically lose all the rights appurtenant to his/her mining claims. As stated by this decree: